

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Request for a)	EL 07-018
Declaratory Ruling by PPM Energy, Inc.)	
Regarding the Siting of Wind Power)	BRIEF IN SUPPORT OF
Facilities.)	APPLICANT'S POSITION

COMES NOW the Applicant, PPM Energy, Inc. who files this brief in support of its position, that the wind energy project known as Buffalo Ridge I, LLC (Buffalo Ridge), located in Brookings County, is separate and distinct from the South Dakota portion of MinnDakota Wind, LLC (MinnDakota) and is under the threshold required for issuance of a permit for construction under state law.

FACTS

The Buffalo Ridge project is separately permitted for 55 megawatts from Brookings County, South Dakota and the developers intend to use 50.4 MW of the permit and to bring the project on line in 2008. The South Dakota portion of the 150 MW MinnDakota project includes only 54 MW in Brookings County, South Dakota. MinnDakota is permitted separately by Brookings County for a total of 99 megawatts. See the Affidavit of Tim Seck, attached.

APPLICABLE LAW

49-41B-2. Definition of terms. Terms as used in this chapter mean:

- (1) "AC/DC conversion facility," an asynchronous AC to DC to AC tie that is directly connected to a transmission facility or a facility that connects an AC transmission facility with a DC transmission facility or vice versa;
- (2) "Associated facilities," facilities which include, aqueducts, diversion dams, transmission substations of two hundred fifty kilovolts or more, storage ponds, reservoirs, or cooling ponds;
- (3) "Commission," the Public Utilities Commission;
- (4) "Construction," any clearing of land, excavation, or other action that would affect the environment of the site for each land or rights of way upon or over which a facility may be constructed, but not including activities incident to preliminary engineering or environmental studies;
- (5) "Energy conversion facility," any new facility, or facility expansion, designed for or capable of generation of one hundred megawatts or more of electricity, but does not include

any wind energy facilities;

(6) "Facility," any energy conversion facility, AC/DC conversion facility, transmission facility, or wind energy facility, and associated facilities;

(7) "Permit," the permit issued by the commission under this chapter required for the construction and operation of a facility;

(8) "Person," an individual, partnership, limited liability company, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other public or private entity, however organized;

(9) "Siting area," that area within ten miles in any direction of a proposed energy conversion facility, AC/DC conversion facility, or which is determined by the commission to be affected by a proposed energy conversion facility;

(10) "Trans-state transmission facility," an electric transmission line and its associated facilities which originates outside the State of South Dakota, crosses this state and terminates outside the State of South Dakota; and which transmission line and associated facilities delivers electric power and energy of twenty-five percent or less of the design capacity of such line and facilities for use in the State of South Dakota;

(11) "Utility," any person engaged in and controlling the generation or transmission of electric energy and gas or liquid transmission facilities as defined by § 49-41B-2.1;

(12) "Wind energy facility," a new facility, or facility expansion, consisting of a commonly managed integrated system of towers, wind turbine generators with blades, power collection systems, and electric interconnection systems, that converts wind movement into electricity and that is designed for or capable of generation of one hundred megawatts or more of electricity. A wind energy facility expansion includes the addition of new wind turbines, designed for or capable of generating twenty-five megawatts or more of electricity, which are to be managed in common and integrated with existing turbines and the combined megawatt capability of the existing and new turbines is one hundred megawatts or more of electricity. The number of megawatts generated by a wind energy facility is determined by adding the nameplate power generation capability of each wind turbine. (Emphasis added)

ARGUMENT

Wind power is a new and popular industry in South Dakota. Some reports have labeled South Dakota as the "Saudi Arabia" of wind. Some resource assessments have pegged South Dakota as having the second highest wind energy potential of the 48 contiguous United States.

PPM, the applicant in this captioned action, has sought to become one of the industry leaders in South Dakota. PPM has successfully brought on-line a number of wind projects in other states.

The subject project at hand in the above-captioned matter is the Buffalo Ridge project, to be constructed in Brookings County. The construction schedule and location of the project led PPM to seek a declaratory ruling from the Commission that Buffalo Ridge is separate and distinct from the MinnDakota project currently under construction and thus does not require a siting permit from the South Dakota Public Utilities Commission.

First Question

Whether Buffalo Ridge I and MinnDakota projects are separate and distinct, and not commonly managed and integrated wind development projects requiring siting permits.

Key considerations for the Commission to the conclusion that the Buffalo Ridge project is separate and distinct and therefore not subject to a site permit from the South Dakota Public Utilities Commission are provided below.

The projects will be built in different years. The Buffalo Ridge project is starting construction, with roads and pads built this fall, and tower erection and turbine installation scheduled for 2008. The MinnDakota project is being built right now and will be operational at the end of this year.

The two projects use different turbines and turbine contracts. MinnDakota uses 1.5MW GE turbines, and Buffalo Ridge will utilize 2.1 MW Suzlon turbines. Necessarily, there are different contracts for turbine construction.

The power output from each project will be sold under separate contracts and projects are separately metered and have different SCADA control systems for operations.

The project areas have no common land parcels and are separated by 2 miles or more at their closest point.

The projects will be financed separately which requires clear legal separation between projects. Once up and running, and online, Buffalo Ridge will be financed by investors to efficiently utilize the Federal Production Tax Credits for wind projects. To facilitate the financial structure for the Buffalo Ridge project necessary to meet IRS regulations, generally accepted accounting principles, and to provide financiers and owners with the security they require in exchange for their funding, clear legal separation must exist. Those investors expect and demand that the assets in which they have invested are held, kept and managed for their benefit only. PPM has respected that in these two projects, and there is a clear legal and financial separation between the projects.

The Buffalo Ridge project interconnection is separate and distinct from the MinnDakota project despite the fact that both projects would interconnect to the Midwest Independent System

Operator's transmission system at Xcel Energy's Yankee substation. The projects will not be electrically integrated within the substation. One feeder from the project substation will carry all of the electrons of Buffalo Ridge and the other three feeders will carry all of the electrons of MinnDakota to the Interconnect Point at the Yankee Substation. There will be no integration of the electrons of the project. The electrical facilities within the substation will be separately owned by the two projects with the exception of the land, fencing and other common facilities at the substation. The costs of these non-electric facilities will be shared between the projects.

The facilities also share an interconnection agreement. The G-255 interconnection agreement is a shared agreement between the two entities. While the sharing of interconnection agreement is not the usual course, there is prior precedent. PPM is proposing to share an interconnect agreement in MN between a 51 MW project developed in 2003 and a separate but adjacent 49.5 MW project developed in 2008, known as Moraine and Moraine II projects respectively. See attached order from the MN PUC. Each project will have a divided (an undivided) interest in the interconnection agreement and will be electrically separate from the other project. Each project was separately permitted.

Suzlon will provide basic operations and maintenance for the Buffalo Ridge project for at least two years and possibly as long as seven years. To achieve operating efficiencies after the Suzlon maintenance agreement has lapsed, it is expected that MinnDakota and Buffalo Ridge I will utilize same operations and maintenance crew and building but projects will be allocated costs of the crew and building separately. In addition, each project will have its own separate supply of spare blades, generators, etc. It is common practice for operations and maintenance staff to maintain several projects in a region. When one really thinks about that, there's no functional difference between two such projects sharing O&M and both contracting for it with a third agency. PPM argues that this is no basis on which to determine the need for a permit. Operations and maintenance is not a synonym for "commonly managed" or "integrated."

To minimize the need for additional overhead lines, the projects will run their overhead lines on the same transmission line poles. There will be specific agreements in place between the projects assigning costs and rights to the respective projects. The MPUC has been pushing companies in MN where numerous projects are proposed to share transmission structures and other facilities like substations to reduce impacts to the local area. Co-locating the separate electrical circuits on shared poles reduces the need for another stand-alone overhead circuit for over 9 miles.

The Buffalo Ridge is separate and distinct from the South Dakota portion of the MinnDakota project and thus does not require a siting permit from the South Dakota Public Utilities Commission. In summary, key considerations that support this conclusion are;

1. Different wind turbines
2. Built in different years
3. Separate offtake agreements
4. Separately financed projects
5. Different construction contracts

6. Over two miles of separation between nearest wind turbines in each project
7. Separate county permits
8. Different landowners involved in two projects
9. Different SCADA systems
10. Different permanent met towers
11. Separate electrical circuits for each project located on common transmission poles
12. Electric facilities separately owned within the substation
13. Separate Operating and Maintenance Agreements although facilities and staff may be common to both projects
14. Electrical interconnection is not integrated although interconnection will be under a common agreement with MISO

Applicant urges the Commission to adopt a “totality of the circumstances” test, which balances all of the relevant facts, in order to determine whether a particular wind energy facility is a commonly managed integrated system as defined in state law. The Commission should look at the entire set of facts as they relate to each entity in order to determine the outcome.

It would be detrimental to the development of the wind industry if the Commission adopted an all or nothing test such that any facet of integration or management which a system had in common with another would require the permitting process for siting. There may in fact be a number of wind energy projects which ultimately share such things as substations, or operations and maintenance staff and facilities. It would be unfortunate if projects were impeded or hindered by permitting requirements and unable to take timely and efficient advantage of market force developments which would allow for an orderly industry development in South Dakota.

Second Question

If the Commission finds that MinnDakota and Buffalo Ridge I constitutes one commonly managed and integrated facility, should PPM Energy file an application for a siting permit for the additional 6.3 MW which PPM seeks to develop in 2008 or is this proposed increment considered an expansion under the 25 MW expansion threshold?

As outlined above, state law requires a siting permit from the Commission in order to construct a wind energy project in excess of 100 megawatts or construct an expansion of a wind energy project in excess of 25 MW. It is apparent to PPM that the MinnDakota and Buffalo Ridge I projects are not integrated and commonly managed as contemplated by state law. But in the event the Commission disagrees, PPM seeks the guidance of the Commission with respect to the process necessary to achieve PPM’s full goals for the projects.

Currently, PPM has permits from Brookings County and is actively constructing the 54 MW portion of the MinnDakota project located in South Dakota. PPM will complete construction and commissioning of MinnDakota by the end of the year.

PPM is also planning to begin construction of the roads and foundations of 44.1 MW of the Buffalo Ridge I Project in October of this year. PPM would like to expand the planned construction of the Buffalo Ridge I project by an additional 6.3 MW and make it a 50.4MW project. Doing so would put the two combined projects at a total of 104.4 MW, which is over the 100 MW state permit threshold. While the construction of the 6.3 MW could start as early as late fall this year, it could be done next year, depending on the timing and outcome of the Commission decision.

PPM plans to complete the balance of the construction and commissioning of the Buffalo Ridge I project by the end of 2008. The full potential MW contemplated in the Buffalo Ridge I project have been permitted by Brookings County, using their extensive process. PPM believes that the intent of the expansion provision in the state statute was to foster expansions of wind farms and allow them to avoid having to undergo the permitting process, at the state level, for small expansion increments as proposed in Buffalo Ridge I. PPM asserts that the proposed 6.3 MW taking the combined projects above 100 MW would be an expansion, meeting the intent of the 25 MW expansion not requiring a state permit.

Whereupon, the Applicant seeks the Commission's declaration, as argued herein, as to these questions of law.

Dated this 5th day of October, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that the above Brief in Support of Applicant's Position was served upon the following on the 5th day of October, 2007 either electronically or by mailing a true and correct copy thereof to them by first class mail, postage prepaid, at their last known addresses, to-wit:

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